in the conclusion which I have reached and the decision of the committee that the appellant was guilty of an act or default discreditable to an accountant is correct, I am clearly of the opinion that the punishment meted out to the appellant is manifestly excessive. The committee imposed a maximum suspension of five years on the appellant under s 33(3)(b) of the Act. By any standard, this is totally disproportionate to the conduct of the appellant. In my opinion, taking into account all the relevant circumstances, the imposition of a maximum penalty of $500 under para (c) of s 33(3) would be sufficient and appropriate.

I now turn to the question of costs. Clearly, in view of what I have decided, there should be no order as to costs before the committee. The only question is whether the appellant should be awarded costs of the appeal. I refrain from making this order, and my reason is this. The society has to discharge its duty under the Act; it has not acted improperly or vexatiously as against the appellant. The committee at their inquiry had made a finding and given their decision against the appellant. Upon appeal by the appellant it seems to me that it is incumbent on the society, in this case at any rate, to resist the appeal and present its argument to court to assist the court in arriving at its decision. Having regard to all the circumstances, I make no order as to costs here and below.

Appeal allowed.

Solicitors: *Chor Pee & Co*; *Lee & Partners*.

Reported by *Ng Sheau Jiuan*

Allport Alfred James v Wong Soon Lan

HIGH COURT (SINGAPORE) – DIVORCE NO 593 OF 1987
CHAO HICK TIN JC
7 DECEMBER 1988

Civil Procedure – Order of prohibitory injunction served on respondent – Order not indorsed with penal notice – Whether omission a purely technical one – Whether case can be treated as if no order had been served and execution to be thereby effected under O 45 r 7(6) of the Rules of the Supreme Court 1970 – Rules of the Supreme Court 1970, O 45 r 7(4) & (6)

Family Law – Injunction obtained by petitioner restraining respondent from disposing of sale proceeds of matrimonial property – Order served on respondent but not indorsed with penal notice – Whether omission a purely technical one – Whether case can be treated as if no order had been served and execution to be thereby effected under O 45 r 7(6) of the Rules of the Supreme Court 1970

The petitioner had filed a petition for divorce and was granted a decree nisi. He was earlier granted an ex parte order restraining the respondent from disposing of the proceeds of sale of their matrimonial property and this order was served personally on the respondent. However, the order was not indorsed with the penal notice as required under O 45 r 7(4) of the Rules of the Supreme Court 1970. The respondent failed to comply with the injunction and the petitioner filed an application for committal of the respondent for contempt.

At the hearing, counsel for the petitioner contended that since under O 45 r 7(6) of the Rules of the Supreme Court 1970 a prohibitory injunction may be enforced even though it has not been served provided that the person has notice of the order, it follows that the omission to indorse the penal notice on the order could not be critical and is purely a technical omission. Counsel also contended that the present case might be treated as if no order had been served on the respondent and following r 7(6) execution can be effected.

Held, dismissing the application:

(1) The court's powers to punish any person for civil contempt are quasi-criminal in nature. Where there is prescribed any procedural step to the exercise of that jurisdiction, that rule should be scrupulously observed and strictly complied with.

(2) From O 45 r 7(4) and (6), it is clear that the distinction between a prohibitory injunction and a mandatory injunction lies in the fact that enforcement of a prohibitory injunction may be effected even though personal service of the order has not been effected provided that the person against whom the injunction is made has notice of it. For a mandatory injunction, personal service must be effected before enforcement may be taken. Nothing more should be read into r 7(6). It can in no way be interpreted to excuse the non-compliance of the requirement of the indorsement of a penal notice.

(3) As for counsel's second contention, the fact that the order was served and it was without the penal notice cannot be disregarded. To accept counsel's contention would really amount to saying that an order for a prohibitory injunction need not be drawn up as required by r 7(4) before enforcement may be carried out. The court would in effect be deciding that r 7(4) has no application to a prohibitory injunction which will be in direct conflict with what is stated in r 7(4).

[*Editorial Note*: The petitoner has appealed to the Court of Appeal vide Civil Appeal No 1 of 1989.]

Cases referred to

1 *Husson* v *Husson* [1962] 3 All ER 1056 (distd)
2 *United Telephone Co* v *Dale* (1884) 25 Ch D 778 (distd)
3 *Hampden* v *Wallis* (1884) 26 Ch D 746 (folld)
4 *Stockton Football Co* v *Gaston* [1895] 1 QB 453 (folld)

Legislation referred to

Rules of the Supreme Court 1970 O 45 r 7(4), (6)

Vijay Kumar for the applicant/petitioner.
JS Yeh for the defendant/respondent.

Cur Adv Vult

Chao Hick Tin JC: By this motion the petitioner applies for an order of committal to be made against the respondent on the ground that the respondent has committed contempt of court in disobeying an ex parte order made on 2 April 1987 restraining her from disposing the sum of

$313,000, being the proceeds of sale of the matrimonial property, situated at 14 Fulton Road, Singapore.

The said ex parte order was served personally on the respondent on 3 April 1987. On an application by the respondent to discharge the interim injunction, the court on 22 May 1987 ordered that the said interim injunction be continued.

The petition for divorce was heard over four days in January/February 1988, at the end of which Dr AP Rajah J granted a decree nisi to the petitioner on the ground that the marriage had irretrievably broken down in that the respondent had behaved in such a way that the petitioner could not reasonably be expected to live with her. The interim injunction granted on 2 April 1987 was ordered to be continued.

On 15 April 1988, leave was granted to the petitioner to make an application for committal of the respondent for contempt. The hearing before me now is on this application for committal. On the facts before me, it is clear beyond a shadow of a doubt that the respondent has failed to comply with the injunction granted on 2 April 1987. The terms of the order are clear. In her affidavit filed on 30 November 1988 in answer to this application, the respondent states the following:

> After receipt of the said order which was served on me at my residence ... I consulted my former solicitor who explained to me that I could not spend the proceeds of sale of the matrimonial property. I had spent the money. However, I do not know and had no reasons to suspect the consequences of a breach of such an order.

There is only one real issue for me to decide and that is this. Can this court enforce the injunction by a committal order when a copy of the order that was served on the respondent on 3 April 1987 was not indorsed with the penal notice as required under O 45 r 7(4) of the Rules of the Supreme Court. It is not in dispute that the order of 22 May 1987 ordering the continuation of the interim injunction also did not contain any penal notice. Order 45 r 7(4) provides that there must be indorsement on the copy of the order served on the person, a notice that if he disobeys the order, he is liable for process of execution to compel him to obey it. However, under r 7(6), it is provided that a prohibitory injunction may be enforced even though it has not been served if the court is satisfied that pending such service the person against whom it is sought to enforce the order has had notice thereof either by being present when the order was made or by being notified of the terms of the order. Following from r 7(6), every order requiring the person to do an act, ie mandatory order, must be served on the person before it may be enforced against him.

Counsel for the petitioner argues that since a prohibitory injunction may be enforced even though it has not been served provided that the person has notice of the order, it follows that the omission to indorse the penal notice on the order could not be critical. He contends that this is purely a technical omission and the respondent knew perfectly well she has to comply with it as she even applied to have the order discharged which was refused by the court. Counsel relies on two cases: *Husson* v *Husson*[1] and *United Telephone Co* v *Dale*.[2] However, these two cases were concerned not with the question as to the consequences of the omission of the penal notice but with the question of service. These two cases decided that even though no copy of the order was served on the defendant, it could be enforced against him so long as he had notice of the order, being present in court when the order was made.

Paragraph 45/7/6 of the *Supreme Court Practice 1988* states the following as regards the need for a penal notice:

> It is a necessary condition for the enforcement of a judgment or order under r 5 by way of sequestration or committal that the copy of the judgment or order served under this rule should have the requisite penal notice indorsed thereon. This must be indorsed on the copy for service of all orders which are required to be served, whether personally or not ...

The court's powers to punish any person for civil contempt are quasi-criminal in nature. Where there is prescribed any procedural step to the exercise of that jurisdiction, that rule should be scrupulously observed and strictly complied with. From r 7(4) and (6) of the RSC cited above, it is clear that the distinction between a prohibitory injunction and a mandatory injunction lies in the fact that enforcement of a prohibitory injunction may be effected even though personal service of the order has not been effected provided that the person against whom the injunction is made has notice of it. For a mandatory injunction personal service must be effected before enforcement may be taken. I do not think anything more should be read into r 7(6). It can in no way be interpreted to excuse the non-compliance of the requirement of the indorsement of a penal notice. The rationale for the enforcement of a prohibitory injunction notwithstanding that the order has not been served is clear. It is basically to prevent a party who knew of the order made against him to act contrary to it before the order is served on him. On the other hand, the rationale for a penal notice is to ensure that the person against whom the order is made fully appreciates the consequences of any non-compliance. This point did not arise and was not considered in *United Telephone Co*.[2] In my opinion, the omission to indorse the penal notice on the order served on the respondent is fatal.

I find support for this view in the case *Hampden* v *Wallis*.[3] In that case, the defendant was ordered to file within seven days after service of the order an affidavit of documents in his possession. The order was served on his solicitor as was permitted by the Rules. The copy of the

order did not have indorsed on it, the notice required by O XLI r 5 of the Rules of the Supreme Court 1883, warning the person to obey the same, and that he would be liable to a process of execution if he failed to obey it. At first instance, Chitty J held that as the order was served on the defendant's solicitor and not on the defendant personally, the requirement of a warning notice did not apply to the situation as the solicitor 'must be taken from his professional position to be fully aware of the penalties of disobedience'. This decision was overruled by the Court of Appeal (Lindley LJ dissenting on a different point) where Baggallay LJ said:

> With every respect for the learned judge's opinion, I cannot take the same view of the construction of the rule. The order relates to all judgments, and r 5 is perfectly general in its tone; there is nothing in it limiting it to any particular kind of orders. It is suggested that it was intended to be confined to process of contempt. I can see no ground for confining it in that way. Then the question is whether it applies only to cases where the order is served on the person required to obey it. When we look at O xxxi r 22, we find that service on the solicitor shall be sufficient service – that must mean sufficient for all purposes – in order to found an application for an attachment. If the service is on the solicitor it is the duty of the solicitor to communicate it to the party, and he is himself liable to an attachment if he fails to do so. Therefore, this being a sufficient service to support an attachment, it appears to me clear that the provisions of O xxi r 5 apply. On this point, therefore, I am unable to come to the same conclusion as Mr Justice Chitty. I think the proceedings for attachment have failed by reason of the want of the proper indorsement.

The importance of the indorsement of the penal notice is further illustrated by the case *Stockton Football Co* v *Gaston*[4] where in the affidavit filed and served in support of a motion for attachment it was not stated that the order was indorsed with the notice. Kennedy J said at p 454:

> It is clear that applications of this nature ought to be made in strict conformity with the rules of court, and therefore, by the terms of O xli r 5, the order required to be obeyed must be served, with an indorsement upon it, stating the result of neglecting to obey the order. The defendant would be entitled to assume that the affidavit served with the notice of motion contained the evidence relied on. In the present case the service was clearly irregular, for the affidavit did not show that the order of the registrar, when served on the defendant, had indorsed upon it any memorandum such as is required by the rule to which I have referred. No doubt an affidavit was afterwards served, with the order, duly indorsed, exhibited to it, but this does not amount to a sufficient statement that the order did in fact contain the necessary indorsement at the time when it was served on the defendant. The proceedings are penal, and the rules must be strictly observed.

One final point. The argument is made that the position in our case here may be treated as if no order had been served on the respondent and following r 7(6) execution can be effected. I do not think it proper for me to disregard the fact that the order was served and it was without the penal notice. For me to accept this argument would really amount to saying that an order for a prohibitory injunction need not be drawn up as required by r 7(4) before enforcement may be carried out. I would in effect be deciding that r 7(4) has no application to a prohibitory injunction. That will be in direct conflict with what is stated in r 7(4). This court should not be doing that. As the liberty of a person is involved in such proceedings, the prescribed rule must be strictly observed.

In the circumstances, and much that I regret it as the respondent has clearly breached the injunction, this application must fail. Though the point appears technical, it is the very foundation upon which the power of the court to commit a person for contempt under O 45 of the RSC rests. In the result, I make no order on the motion. Having regard to the circumstances of the case, I also make no order as to costs.

Application dismissed.

Solicitors: *Vijay Perumal & Jeremiah; JS Yeh & Co.*

Reported by *Ng Sheau Jiuan*

Re Winston Chen Chung Ying

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 387/86
WEE CHONG JIN CJ, LAI KEW CHAI AND RAJAH JJ
16 NOVEMBER 1988

Legal Profession – Advocate & solicitor – Plea of guilt to offence under Companies Act – Conviction – Grossly improper conduct in the discharge of professional duty – Complaint by Attorney General – Disciplinary proceedings by Law Society – Show cause by advocate and solicitor – Legal Profession Act (Cap 217, 1970 Ed), ss 80, 84(2)(a), (h) & 98(1) – Companies Act (Cap 185, 1970 Ed), s 39(4)

These disciplinary proceedings before the High Court of three judges (Wee Chong Jin CJ, Lai Kew Chai and Rajah JJ) were, following a complaint by the Attorney General, initiated by the Law Society of Singapore against the respondent Winston Chen Chung Ying, an advocate and solicitor, under s 84(2)(a) and (b) of the Legal Profession Act (Cap 217, 1970 Ed). In so far as the High Court is concerned, the respondent is required to show cause why he should not be dealt with under s 80 of the Act in respect only of charges nos 2 and 3, which, so far as material, read as follows:

Charge no 2 (the conviction charge): 'By reason of his having been convicted of the offence referred to in paras 32, 33 and 33a (abetting a contravention of s 39(4) of the Companies Act) the respondent rendered himself liable to discipline under s 84(2) of the Legal Profession Act.'

Charge no 3 (the grossly improper conduct charge): 'The respondent, in or about April 1982, in connection with an offer of or invitation to purchase shares in CCC (Holdings) Ltd, did aid